

*Our bondage to law is the price we pay for  
freedom. Judge Robert T. Mann*

## **PRACTICE STANDARDS CRIMINAL ACTIONS**

**TO:** Counsel and Parties  
**FROM:** Judge Robert E. Blackburn, United States District Judge  
**RE:** Practice Standards (Criminal Actions)

### **I. INTRODUCTION**

#### **A. Purpose And Authority**

1. Consistent with Fed.R.Cr.P. 2, these practice standards are adopted **effective April 15, 2002**, to secure the just determination of every criminal proceeding. They may be revised without notice and may be modified by orders entered in specific cases.

#### **B. Relation To Local Rules**

1. These practice standards supplement, not supplant or supersede, The Local Rules of Practice of the United States District Court for the District of Colorado **effective April 15, 2002**.

#### **C. Access To Local Rules & Practice Standards**

1. Copies of the local rules are available at <http://www.cod.uscourts.gov> under “United States District Court” at “Local Rules” and from the clerk of the court in **Room A105**.

2. Copies of these practice standards are available at <http://www.cod.uscourts.gov> under “United States District Court” at “Judges’ Procedures” and from the clerk of the court in **Room A105**.

### **II. GENERAL PROCEDURES**

#### **A. Applicable Rules**

1. Those appearing in the District Court must know and follow:
  - a. The Federal Rules of Criminal Procedure,
  - b. The Federal Rules of Evidence,

c. The Local Rules of Practice of the United States District Court for the District of Colorado **effective April 15, 2002.**

## **B. Communications with Chambers**

1. Do not deliver, fax, or e-mail pleadings, motions, or correspondence directly to chambers absent a specific order. Instead, file all such materials in the clerk's office (**Room A105**).

2. For information about the status of a motion or document, please contact the assigned criminal docketing clerk, **Elaine Quintana**, at **303-335-2073** or utilize the **PACER** system available at <http://www.cod.uscourts.gov> under "United States District Court" at "PACER."

3. For information about courtroom technology, trial preparation, or submission of trial exhibits, please contact the courtroom deputy clerk, **Ginny Kramer**, at **303-335-2104**.

4. For other information or assistance, please contact **Susan Schmitz** at **303-335-2350**. **Please do not contact the law clerks about procedural or scheduling matters. They may speak to counsel only pursuant to the court's specific instructions.**

## **C. Citations**

1. Citations shall be made pursuant to the most current edition of **THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION** (currently the 17<sup>th</sup> ed. 2000).

2. General references to cases, pleadings, depositions, or documents are insufficient if the document is more than one page in length. Whenever possible, specific references in the form of pinpoint citations shall be used to identify relevant excerpts from a document.

3. These Practice Standards should be cited as REB Cr. Practice Standard, Part, Section, Subsection, Paragraph, and Subparagraph (e.g., REB Cr. Practice Standard V.F.3.A.1.a.).

## **D. Continuances of Hearings and Trials**

1. Motions to continue (including motions to vacate or reset) hearings and trials shall be determined pursuant to D.C.COLO.LCivR 7.1 and shall be granted only for good cause. Oral motions to continue made at the time of the hearing are unacceptable. Stipulations for continuance shall not be effective unless and until approved by the court.

When a motion to continue is granted, all parties will be notified as soon as practicable.

### **III. COURTROOM PROCEDURES**

#### **A. Court Appearances**

1. Court time is valuable to litigants, counsel, and court staff. **Please be prompt and prepared. If a scheduled matter is called for hearing and a party or an attorney is not present, the matter may be moved to the end of the docket, may be reset for hearing, sanctions may be imposed, or other orders may be entered as appropriate. If a party is not prepared as required by the order setting the hearing, sanctions may be imposed.** Unless otherwise directed, all matters will be heard in Courtroom C-202. Matters heard by a Magistrate Judge will be in the courtroom assigned to that Magistrate Judge.

#### **B. Courtroom Organization and Protocol**

1. The Government's table is closest to the jury box. There is one lectern in the courtroom at which all counsel and pro se parties shall stand to make any statement or objection. In jury trials, bench conferences are strongly discouraged and will be minimized. The defendant(s) must be present at any bench conference. Matters should be raised either before or after the trial day.

2. Please remember that the administration of an oath or affirmation is a solemn and integral part of a proceeding. Your complete attention and that of everyone in the courtroom is expected and required.

3. Please observe traditional courtroom decorum: please rise to address the court, and please request permission to approach the bench and any witness.

4. If you have a question or problem about courtroom protocol, contact the courtroom deputy clerk, **Ginny Kramer**, at **303-335-2104**.

#### **C. Recording of Proceedings**

1. The official record of all trials and proceedings will be taken by either electronic sound recording (audiotape) or by a realtime reporter. Prior to the beginning of any proceeding, please provide the courtroom technician or court reporter with your business card and a list of unusual or technical vocabulary or jargon that will be used in testimony or argument.

2. If electronic recording is used, **please speak into the microphone when you stand to make your statement or objection or to address the court.**

3. Tape recordings of all electronically recorded proceedings may be ordered from the clerk's court services specialist, **Charlotte Hoard**, at **303-335-2100** at a cost of \$20.00 per tape (90 minutes).

4. The realtime reporter assigned to the court is **Suzanne Claar 303-335-2107**. Transcripts of proceedings may be ordered from Mrs. Claar. Requests for realtime, daily or hourly copy must be made at least **thirty (30)** days before the trial or hearing. Further details can be obtained from Mrs. Claar.

#### **D. Exhibits**

1. Each party must pre-mark all exhibits and provide a copy to opposing counsel or any pro se party before the hearing or trial pursuant to the order setting the hearing or the Trial Preparation Order. Absent stipulation between the parties approved by the court, exhibits not timely exchanged before the hearing will not be admitted. Any stipulation of fact should be marked and marshaled as an exhibit.

2. Parties should use the following designations:

<u>Numbers</u>	<u>Letters</u>
Plaintiff	Defendant
Petitioner	Respondent
Movant	Respondent
Appellant*	Appellee*

\* Appellant and Appellee designations should be used only in those rare instances when the other designations are inappropriate.

3. Marking of Exhibits:

a. numerically for a **single party plaintiff (i.e., the government), petitioner, movant, or appellant**: Government's, Petitioner's, Movant's, or Appellant's exhibit 1, 2, 3, etc.;

b. alphabetically for a **single party defendant or respondent** as follows: Defendant's or Respondent's exhibit A, B, C, etc. through Z, then A1, B1, C1, etc., through Z1, then A2, B2, C2, etc.;

c. numerically for **multiple party movants** as follows: the first-named movant as 1-Movant's exhibit 1, 2, 3, etc., and each subsequently named movant 2-Movant's, 3-Movant's, etc., exhibit 1, 2, 3, etc. (for example "3-Movant's 57"); and

d. alphabetically for **multiple party defendants** as follows: for each

defendant in the order appearing in the caption as 1-Defendant's, 2-Defendant's, etc., exhibit A, B, C, etc., through Z, then A1, B1, C1, etc., through Z1, then A2, B2, C2, etc.(for example "5-Defendant's C2").

e. The case number shall appear on each exhibit sticker or label.

4. Exhibits must be bound, e.g., in three-ring notebooks or folders, and the notebook or folder must be labeled with the following information: (i) caption, (ii) nature of proceeding, (iii) scheduled date and time, (iv) party's name and designation, and (v) "original" or "copy." If exhibits are not bound and labeled properly, the hearing may be delayed or continued until they are. Separate sets of bound exhibits must be brought to the hearing or trial for the court and the witness stand. If the matter is set for trial, the Trial Preparation Order will specify the number of sets of exhibits.

5. Each party shall also submit an original and one copy of all exhibits, together with a Witness List and Exhibit List (forms available in the clerk's office or online at <http://www.cod.uscourts.gov> under "United States District Court" at "Judges Procedures") to the courtroom deputy clerk before any hearing or trial.

## **E. Witnesses**

1. In scheduling witnesses, follow the "Baseball Rule": one at bat, one on deck, and one in the hole.

2. Rather than handing a witness an exhibit, counsel or a pro se party should direct the witness to the appropriate exhibit already available at the witness stand or request the courtroom deputy clerk to present the exhibit to the witness.

## **F. Depositions**

1. Together with Fed.R.Cr.P. 15, this practice standard governs the use of depositions in criminal proceedings:

a. For jury trials the offering party shall advise all parties of record at the Trial Preparation Conference of the intended offer by specific reference by page and line to facilitate the preparation of objections and the offer of additional portions of the deposition. Parties are required to provide a person to read the deposition answers.

b. For bench trials depositions will not be read in open court. Instead, the court will read them in chambers in any requested sequence. At the beginning of the trial, the offering party shall provide the courtroom deputy clerk with two copies of the relevant deposition transcript marked as an exhibit with plaintiff's

designated portions highlighted in yellow and the defendant's in blue.

### **G. Videotape Depositions**

1. Objections to any portion of a proposed videotaped deposition shall be filed and determined pursuant to D.C.COLO.LCivR 7.1. Objections shall be resolved before trial to facilitate appropriate redaction.

### **I. Special Equipment (Audio/Video)**

1. The court has no audio, video, audio-visual, or other special equipment. Please make your own arrangements. Notify the courtroom deputy clerk, **Ginny Kramer, 303-335-2104** no later than **fourteen (14) days** before trial of the date and time you need such equipment to be brought through security for use in the courtroom.

## **IV. TRIALS**

### **A. Trial Preparation Conference**

1. The Trial Preparation Conference will be held approximately three to ten days before trial. The Court will issue a Trial Preparation Order which will confirm the trial date, confirm the Trial Preparation Conference date, and specify the tasks to be completed by and during the Trial Preparation Conference.

### **B. Trials To Court**

1. Bench trials will begin on Tuesday morning at 9:00 a.m. Counsel and pro se parties shall be present at 8:30 a.m., to check in with the courtroom deputy clerk.

2. For a trial to the court, a resume or *curriculum vitae*, marked and marshaled as an exhibit, generally will suffice for the qualification of an expert witness.

### **C. Jury Trials**

1. Jury trials will begin with jury selection on Monday morning at 10:30 a.m., with the trial commencing after jury selection. Counsel and pro se parties shall be present at 10:00 a.m., to review and complete the required **Trial Checklist** with the courtroom deputy clerk (forms available in the clerk's office or online at <http://www.cod.uscourts.gov> under "United States District Court" at "Judges Procedures"). Commencing the second day of trial, the normal trial day will begin at 8:30 a.m. and continue until 4:30-5:00 p.m. Time permitting, motions in limine or preliminary matters will be heard before or after the trial day; however, hearings in other cases may also be

set for such times. The trial day will have periodic morning and afternoon recesses of approximately **ten (10)** minutes duration. A lunch break will be scheduled for one hour fifteen minutes beginning sometime between 11:30 a.m. and 12:30 p.m. depending on the exigencies of trial.

2. Jurors and alternate jurors shall be selected using the **Juror Selection Protocol** of the court (written protocol available in the clerk's office or online at <http://www.cod.uscourts.gov> under "United States District Court" at "Judges Procedures").

3. Voir Dire:

a. Not less than **five (5)** business days before trial, the parties shall file their proposed *voir dire* questions.

b. Absent special circumstances all *voir dire* examination will be conducted by the court.

4. *Batson* challenges [*See Batson v. Kentucky*, 476 U.S. 79 (1986)] shall be made and considered at the conclusion of *voir dire* examination by the court, but before the jury is seated and sworn.

5. Jury Instructions

a. Not less than **five (5)** business days before trial, counsel and any pro se party shall confer and shall file with the court those jury instructions and verdict forms that the parties stipulate should be given to the jury. Otherwise, concerning special or disputed instructions or verdict forms, not less than **five (5)** business days before trial, each party shall present any special or disputed instruction as provided below in Subsection b,

b. Assuming that all instructions are prepared on a word processor, the instructions should be placed into three separate documents or files on a 3.5 inch IBM-compatible diskette in Word Perfect (preferably Word Perfect 9) format. One file or document should consist of **all** stipulated instructions tendered pursuant to the previous section. The second file or document should consist of **all** plaintiff's tendered instructions that defendant finds objectionable. The third file or document should consist of **all** defendant's tendered instructions that plaintiff finds objectionable. Separate, additional files or documents should include objections to instructions tendered by other parties, if any, to the case. Finally, each verdict form tendered must be in a separate document or file on the diskette.

c. Each party shall then file a brief or memorandum in support of the proposed special or disputed jury instructions and verdict forms.

d. At the jury instruction conference after the close of evidence, the court shall consider only those instructions managed in conformity with the foregoing Subsections a and b or which address unanticipated matters raised during trial.

6. Trial jurors will be permitted to take notes during the trial.

7. The jury will be instructed by the court before closing argument.

8. The jury will be given copies of the written jury instructions and verdict forms for their use and consideration during deliberations.

#### **D. Glossary**

1. Not later than **five (5)** business days before commencement of either a bench trial or a jury trial, counsel and any pro se party shall provide the court, the court reporter, the courtroom deputy clerk, opposing counsel, and any pro se party with a glossary of any unusual or technical terms.

### **V. MOTION PRACTICE**

#### **A. Motions In Limine & Trial Briefs**

1. Motions in limine are strongly discouraged, *a fortiori*, when the motion is evidence driven and cannot be resolved until evidence is presented at trial.

2. Trial briefs shall not be filed absent specific court order. When required, trial briefs shall not exceed **ten (10) pages** (accompanied, whenever possible, by the brief in computerized form on a 3.5 inch IBM-compatible diskette in Word Perfect [preferably Word Perfect 9] format) and shall be filed not later than **five (5)** business days before trial. Please flag evidentiary issues in a trial brief rather than by motion in limine.